IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15455 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRABHAKAR PANDURAV ISHE - Petitioner(s)
Versus
DIVISIONAL CONTROLLER GSRTC SURAT DIVISION - Respondent(s)

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Appearance :
MR GIRISH K PATEL for Petitioner
MR HARESH J TRIVEDI for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 31/07/2007

ORAL JUDGMENT

Shri Girish K. Patel, learned counsel for the petitioner; Shri Haresh J. Trivedi, learned

counsel for the respondent.

2. The petitioner workman, being aggrieved by the award dated 29.7.99 passed by the Labour Court, Surat in Reference [LCS] No. 860 of 1997 is before this Court with a submission that rejection of the Reference was absolutely illegal and contrary to law.

3. The short facts necessary for disposal of the present matter are that on strength of the panchnama prepared on the spot, First Information Report [FIR] was lodged on 9.6.92. The petitioner-State Transport Corporation bus driver, driving a vehicle rashly and negligently hit a pedestrian, accident led to the death of the said pedestrian. On basis of the said FIR, the petitioner was prosecuted before the Judicial Magistrate First Class, Vyara in Criminal Case No. 2850/92. However, without awaiting judgment of the Criminal Court, the department issued a charge sheet to the petitioner and on conclusion of the inquiry, vide order dated 22.7.95 after recording the finding that the petitioner was rash and

negligent in driving and as one life was lost, the petitioner deserved dismissal from the services. Being aggrieved by the said order, the petitioner opted for a Reference. It is to be seen that during pendency of the said Reference, the petitioner came to be acquitted in Criminal Case No. 2850/92. The fact of acquittal was brought to the notice of the learned Labour Court but the learned Labour Court, vide its award dated 29.7.99 ignored the acquittal and held that if because of the acts of the petitioner a life was lost, steering cannot be allowed to be handled by the petitioner. It also held that the acquittal in the Criminal Case would be a relevant factor but would not be conclusive proof of the fact that the petitioner was not rash and negligent.

4. Shri G.K.Patel, learned counsel for the petitioner submitted that barring First Information Report and panchnama prepared on the spot and evidence of the Reporter, nothing else could be brought on the record of the departmental inquiry and on strength of such

evidence only, the petitioner had been removed from the services. He submits that the very same evidence has been considered by the Criminal Court and the said Court found that such evidence was not reliable. He submits that the fact of the acquittal should have been taken into proper perspective and the petitioner was required to be reinstated.

5. Shri H.J. Trivedi, learned counsel for the respondent, on the other hand, submitted that the scope of criminal matter and the departmental inquiry being different, departmental authorities were entitled to give their own conclusion and the acquittal would not come in the way of civil finding which is always based upon preponderance of probabilities.

6. In the opinion of this Court, the learned Labour Court was absolutely unjustified in holding that because of rash and negligent driving of the petitioner, a person lost his life. The competent Criminal Court has acquitted the petitioner with all the charges and has come

to a conclusion that the prosecution failed in bringing home the guilt. True it is that the acquittal of a person by a Criminal Court would not conclude the issue but such acquittal would always be relevant factor and if it is by a Competent Magistrate, then, it would assume some importance. If the Criminal Court found that the accused did not commit any crime, then, such finding is worth respect. Unfortunately for the department, they did not wait for the verdict of the Criminal Court, proceeded with fast pace and directed termination of the petitioner. The Labour Court, in the opinion of this Court, was again unjustified in holding that because benefit of doubt has been given to the present petitioner, the finding of the Criminal Court would not provide any solace to the present petitioner.

7. The question for consideration would be that whether the departmental authorities were justified in holding the petitioner guilty even without awaiting verdict from the competent Criminal Court. The findings recorded by the

departmental authorities certainly would stand vitiated in view of the acquittal of the present petitioner.

8. The award made by the learned Labour Court is based on surmises and conjectures and it proceeds on a foundation which was never founded by the department. The award deserves to and is accordingly quashed. When this Court wanted to proceed further on merits, Shri Trivedi submitted that the matter be remitted to the departmental authorities for reconsideration of the entire matter. Shri G.K. Patel, learned counsel for the petitioner accepts the proposal and submits that the order of termination be set aside and the matter be placed before the departmental authority/disciplinary authority for a decision afresh in accordance with law.

9. In view of the submissions made by the parties, the findings recorded by the disciplinary authority are hereby set aside and the matter is remanded to the disciplinary authority for deciding the matter afresh after taking into

consideration the order of acquittal and the observations made by this Court.

10. The petitioner shall appear before the disciplinary authority on 10th September, 2007 and shall produce copy of this order before the said authority enabling it to know as to what it is required to do. The petitioner shall also be entitled to produce copy of the judgment recoding acquittal of the petitioner and would also be entitled to lead further evidence in the matter. The department would also be entitled to produce further evidence in the matter. After hearing the parties, the disciplinary authority shall decide the matter afresh in accordance with law after taking into consideration the judgment of acquittal and the observations made by this Court within a period of six months from the date of appearance of the petitioner.

11. The petition is allowed. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

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